

March 27, 2001

Ms. Donna Caton
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Re: WPS Energy Services, Inc.
Docket No. 00-0199

Dear Ms. Caton:

Enclosed please find Motion to Set Aside Schedule on behalf of WPS Energy Services, Inc., which has been filed electronically with the Clerk of the Illinois Commerce Commission this date.

Sincerely,

Edward C. Fitzhenry

ECF/alc

cc: Service List

Enclosure/30889

IN THE STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WPS ENERGY SERVICES, INC.)	
)	
APPLICATION FOR CERTIFICATE OF)	Docket No. 00-0199
SERVICE AUTHORITY UNDER SECTION)	(Reopened)
16-115 OF THE PUBLIC UTILITIES ACT)	

MOTION TO SET ASIDE SCHEDULE
ON BEHALF OF WPS ENERGY SERVICES, INC.

NOW COMES WPS Energy Services, Inc. (WPS Energy), by its attorneys, Lueders, Robertson & Konzen, and for its Motion to Set Aside Schedule, states as follows:

1. On March 16, 2001, the Illinois Commerce Commission (Commission) entered its Order Reopening Proceeding (2001 Order). In the 2001 Order the Commission calls for an expedited schedule in order to ascertain its legal interpretation of Section 16-115(d)(5) in light of the certification previously granted WPS Energy, and to also state its intentions that other entities may participate in the certification process. No reason is given as to why the Commission believes an expedited proceeding is required. No parameters are provided as to what is meant or intended by an expedited proceeding. Because the Commission does not explain why an expedited proceeding is warranted, its actions must be considered in this regard to be arbitrary and capricious.

2. Pursuant to the Hearing Examiner's Notice, parties were allowed to submit proposed schedules. The Illinois Commerce Commission Staff (Staff) submitted a schedule which calls for, among other things, a hearing on April 5, 2001. WPS Energy indicated in its filing, its intention to file a Motion to Set Aside Order Reopening Proceeding and Memorandum of Law in Support of Motion to Set Aside Order Reopening Proceeding and suggested the schedule be based on the

Commission's findings or conclusions with respect to said filing.

3. The Hearing Examiner called for a status hearing on March 26, 2001, and offered the parties an opportunity to seek a compromise on the schedule. No agreement was reached, however. During the course of the hearing, the attorney for WPS Energy indicated why the Staff proposed schedule was inappropriate, to wit:

- No reason or justification had been offered for an expedited schedule, nor were any parameters offered.
- Attorneys for WPS Energy had other commitments during a portion of the time between when the Staff Report was filed and when the hearing date was scheduled.
- There was a need or opportunity to pursue discovery, not only with respect to the Staff Report, but to any replies submitted in response to the Staff Report.
- The need to adequately prepare for an evidentiary hearing.

It was also offered by WPS Energy that an evidentiary hearing could be held in late April, perhaps April 26, 2001. It was suggested at that time under Subpart B of 83 Ill. Adm. Code Part 451 under which the original application was made, an "expedited" proceeding was 45 days. Therefore, an evidentiary hearing in late April was consistent with an expedited hearing in the context of this proceeding.

4. On March 27, 2001, the Commission adopted a schedule in this matter as follows:

Staff's Reply to Parties Response - March 29, 2001

Parties Replies - April 2, 2001

Hearing - April 5, 2001

5. The aforesaid schedule is unreasonable, unnecessary, and highly prejudicial to WPS

Energy for all the reasons and arguments stated herein. First, WPS Energy will soon file a motion asking the Commission to set aside its order because it is illegal. The Commission should first consider these arguments before it proceeds any further. To plow through to a hearing without first considering the legal propriety of the 2001 Order, is a gross waste of time and resources.

The Staff Report, which was prepared at the direction of the Commission, relies upon a number of factual assumptions. WPS Energy should have the opportunity for reasonable discovery in order to respond appropriately to the Staff Report, and respond to replies to Staff's Report, in making its case before the Commission. The schedule in place does not afford WPS Energy the right and opportunity for reasonable discovery. The schedule in place also denies WPS Energy the right and opportunity to appropriately prepare its case, to consult with its attorneys, and to do all other and ordinary things that are needed in order to defend its property interest in the certification.

At the hearing on March 26, 2001, WPS Energy also objected to the timing allowed with respect to the Staff Report. The Commission's Order Reopening Proceeding dated March 16, 2001, gave the Staff until March 23, 2001 to prepare its report, or seven (7) days. However, the Commission only afforded WPS Energy two (2) business days in which to respond to the Staff Report. This is patently unfair, unnecessary, prejudicial and highlights the gross injustice being dealt to WPS Energy.

Also at the hearing on March 26, 2001, as indicated above, it was noted that attorneys for WPS Energy would not be available during a great portion of the time between the filing of the Staff Report and the time of the evidentiary hearing, due to other commitments. Given that the Commission's Order Reopening Proceeding was not entered until March 16, 2001, counsel for WPS Energy would have little opportunity to amend their schedule. Once more, the Commission's actions

with respect to the scheduling violates WPS Energy's right and entitlement to have counsel adequately prepare for hearing.

Wherefore, WPS Energy Services, Inc. respectfully request that the Illinois Commerce Commission set aside the above schedule and have the Hearing Examiner set the matter for status hearing, to consider a schedule that takes into account the concerns above, and for such other, different, and further relief as deemed equitable and just.

Respectfully submitted,

Eric Robertson
Edward C. Fitzhenry
Lueders, Robertson & Konzen
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Attorneys for WPS Energy Services, Inc.

30889

STATE OF ILLINOIS, :
 :
COUNTY OF MADISON, :

SS

VERIFICATION

I, Edward C. Fitzhenry, being duly sworn, depose and state that I have read the foregoing Motion to Set Aside Schedule on behalf of the WPS Energy Services, Inc., and state the contents therein are true and accurate to the best of my belief and knowledge.

Edward C. Fitzhenry
Lueders, Robertson & Konzen
1939 Delmar Avenue
P. O. Box 735
Granite City, IL 62040
618-876-8500

SUBSCRIBED AND SWORN to before me, a Notary Public on this 27th day of March, 2001.

Notary Public

IN THE STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WPS ENERGY SERVICES, INC.)	
)	
APPLICATION FOR CERTIFICATE OF)	Docket No. 00-0199
SERVICE AUTHORITY UNDER SECTION)	(Reopened)
16-115 OF THE PUBLIC UTILITIES ACT)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on this 27th day of March, 2001, we have electronically filed with the Illinois Commerce Commission, Motion to Set Aside Schedule on behalf of WPS Energy Services, Inc., along with Proof of Service thereon attached.

-

Eric Robertson
Edward C. Fitzhenry
Lueders, Robertson & Konzen
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Granite City, IL 62040
(618) 876-8500

PROOF OF SERVICE

STATE OF ILLINOIS)
)
COUNTY OF MADISON) SS

I, Edward C. Fitzhenry, being an attorney admitted to practice in the State of Illinois and one of the attorneys for WPS Energy Services, Inc., herewith certify that I did on the 27th day of March, 2001, electronically file with the Illinois Commerce Commission, Motion to Set Aside Schedule on behalf of WPS Energy Services, Inc., and serve upon the persons identified on the attached service list, both electronically and by depositing same in the United States Mail, in Granite City, Illinois with postage fully prepaid thereon.

Edward C. Fitzhenry
Lueders, Robertson & Konzen
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P. O. Box 735
Granite City, IL 62040
(618) 876-8500

SUBSCRIBED AND SWORN to me, a Notary Public, on this 27th day of March, 2001.

Notary Public

WPS ENERGY SERVICES
ICC Docket No. 00-0199
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